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**FEDERAL COMMUNICATIONS COMMISSION**  
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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Implementation of Sections of the Cable  
Television Consumer Protection and  
Competition Act of 1992: Rate Regulation

Definition and Regulatory Treatment of  
Small Cable Businesses

MM Docket No. 93-215 ✓

MM Docket No. 92-266

**JOINT COMMENTS OF CABLE OPERATORS**

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## SUMMARY

Given the radical changes that have occurred in the cable industry since passage of the 1992 Cable Act, including the consolidation of ownership and the development of meaningful competition from DBS and other sources, the Commission should act to protect the viability of the independent businesses that helped create the cable industry, and which continue to serve a vital function. The Commission should adopt a definition of a "small cable business" that will provide meaningful relief from the Commission's incredibly complex and costly regulation. Using an analogous approach to its regulation of the telephone industry, the Commission should adopt a standard defining a small cable business as one serving less than 400,000 subscribers. In the alternative, the Commission should look to its previous treatment of small MSOs and adopt a standard defining a small cable business as one serving 250,000 subscribers or less, without limitations on the size or number of systems constituting such an entity. In addition, cable operators with less than 5,000 subscribers should be totally deregulated to the extent permitted by law.

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**JOINT COMMENTS OF CABLE OPERATORS**

The parties<sup>1</sup> listed in Attachment A hereto submit these Joint Comments in response to the Further Notice of Proposed Rulemaking issued by the Commission on September 26, 1994 in its Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking.<sup>2</sup> The Commission has requested comments as to whether it should retain current

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<sup>1</sup> The parties listed in Attachment A are primarily mid-sized and smaller cable operators who are hit hardest by the Commission's current approach to regulation.

<sup>2</sup> In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 94-234 (Released Sept. 26, 1994) ("Fifth Order on Recon").

definitions or use different definitions for the purpose of establishing special rate or administrative treatment for small operators and small MSOs that could be small businesses. The Commission also raised the issue of whether the Small Business Administration ("SBA") definition of a small cable business should be adopted by the FCC.

## **I. INTRODUCTION**

The Cable Television Consumer Protection and Competition Act of 1992,<sup>3</sup> directed the Commission to regulate the cable television industry with regard to rate regulation, carriage of broadcast signals, consumer protection, customer service, inside wiring, technical standards, consumer electronics equipment compatibility, program access, commercial leased access, ownership and sale of cable systems, and numerous other areas. The Cable Act also provided that the Commission should seek to reduce regulatory burdens on cable operators. Since passage of the Act, however, the Commission has issued thousands of pages of regulatory decisions and requirements, amounting to the most complex and detailed regulations imaginable — far beyond anything Congress could have envisioned.

In implementing the Cable Act's directives, the Commission has repeatedly stated that special consideration should be given to smaller cable companies which lack the financial and structural resources to cope with extensive regulation. However, the

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<sup>3</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. § 534.

Commission has not adopted meaningful relief from regulation for smaller cable operators. Moreover, the definitions used by the Commission to define the entities that would benefit from reduced regulation in those circumstances are extremely narrow and ad hoc in nature. They were designed primarily as interim measures to ease the transition to a regulatory environment.

In its Fifth Order on Reconsideration in the rate regulation proceeding, the Commission recognized the need to consider a general definition of a "small cable business" that would apply in determining which entities would receive relief from rate regulation as well as other regulatory requirements. The Commission also sought comment on whether it was legally bound by the requirements of the Small Business Act.<sup>4</sup>

The Commission's immediate attention to the needs of small cable businesses could not be more timely. Extensive and costly regulatory burdens are accelerating consolidation within the cable industry at an unprecedented pace, much faster than the Commission realizes.<sup>5</sup> The Commission's complex regulatory policies and micromanagement

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<sup>4</sup> Fifth Order on Recon., ¶ 12.

<sup>5</sup> There have been numerous press reports discussing the rush by many cable companies to sell or merge with larger companies. See, e.g., John M. Higgins, Sammons Latest MSO to Depart Cable Business, Multichannel News, Oct. 17, 1994, at 1, 58; Ted Hearn, Little On Horizon For Calif. System, Multichannel News, Oct. 24, 1994, at 1, 44 (reporting on bankruptcy of 2,300 subscriber system caused by FCC regulation); John M. Higgins, Some Deals Stall Amid Buy Frenzy, Multichannel News, Oct. 24, 1994, at 1, 44 (reporting on the sale of several systems with several hundred thousand subscribers each). Yet, in its recent report to Congress, the Commission recognized only moderate increases in concentration. Implementation of Section 19 of the Cable Television Consumer Protection and Competition

of the industry are forcing out small and mid-sized operators, leaving only the very largest companies to serve the vast majority of cable subscribers.

Furthermore, the Commission's regulations do not reflect current market conditions. The market environment existing at the time of the 1992 Act has changed significantly. It has been replaced by real competition from DBS, TVRO, telephone video dialtone and other sources. Burdened with choking federal and local regulation, which is not applicable to DBS or video dialtone providers, only the very largest cable operators can even hope to compete.<sup>6</sup> The Commission must act decisively to provide immediate regulatory relief for smaller and mid-sized cable operators.

In adopting the proper threshold for determining what entities require relief, the Commission should look to its own regulation of the telephone industry and its basic differentiation for regulatory purposes between Tier 1 and Tier 2 Local Exchange Carriers. As in the telephone industry, there are significant differences in the cable industry between the economics facing the very largest MSOs, and those facing all other cable entities. This

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Act of 1992, F.C.C. 94-235 ¶ 156 (released Sept. 28, 1994).

<sup>6</sup> Although outside the scope of this proceeding, the Commission must be aware that its over-regulation of the cable industry is forcing even large cable companies to sell out to other large companies. See, e.g., K.C. Neel, More Blockbuster Deals, Cable World, Oct. 17, 1994, at 1, 44 (reporting that 9 of top 20 cable companies have sold or expressed intention to sell); Trygve Myhren: On Cable's Shifting Balance of Power, Broadcasting & Cable, Nov. 14, 1994, at 38-46 (interview with President of cable company serving 780,000 subscribers that wants to sell out to larger company primarily because of FCC regulation). Even the largest MSOs cannot cope with the Commission's web of regulation in the face of intense competition from DBS and other video delivery systems.

disparity dictates significantly different regulatory treatment for smaller companies. Smaller cable businesses have higher programming and equipment costs, greater difficulty and expense raising capital, and lack the resources and corporate staff necessary to satisfy burdensome federal, state and local regulations, while still growing and providing improved service to the public. Moreover, as with the telephone industry, reducing regulation of small cable operators will result in a more effective use of the Commission's limited resources. The Commission has been overwhelmed by the sheer volume of work involved in attempting to apply its incredibly complex cable regulations to virtually every cable operator, with only minimal regulatory relief for small operators. Adopting any of the definitions proposed in these Joint Comments will reduce by more than 50% the number of companies subject to the most detailed regulation, but would still maintain at least 85% of cable subscribers under full FCC regulation.

For the Commission's definition of a small cable business to be meaningful, it is critical that the Commission recognize the need to reduce regulatory burdens on small cable operators with regard to all regulation, not just rate regulation. For this purpose, the Commission must reject its adherence to previous "system" and "operator" definitions and look to the overall size of a company's cable business, regardless of whether it has one or many systems. An entity that owns several cable systems, which serve several thousand subscribers each, must be recognized as needing regulatory relief. The Commission must recognize that it is primarily the very largest cable entities that benefit from the programming and equipment discounts and administrative economies of scale that are necessary to have any

chance for survival under the burden of massive regulation in a competitive environment. Independently owned entities operating a system or systems serving several thousand or even several hundred thousand subscribers will cease to exist unless the Commission adopts a sufficiently broad definition of a "small cable business."

## **II. THE COMMISSION SHOULD ESTABLISH AN APPROPRIATE, GENERAL DEFINITION OF A SMALL CABLE BUSINESS**

The impact of the Commission's regulations and competitive market conditions are conspiring against the very survival of the cable industry, particularly small operators. The Commission must recognize these current realities and adopt a standard for identifying a small cable business that would be eligible for decreased regulatory burdens.<sup>7</sup> In creating this standard, the Commission should look to similarly situated industries, such as the telephone industry, where the Commission has defined small businesses such that all but the largest entities are subject to substantially reduced regulatory burdens. In the alternative, the Commission should at least look to its own recognition that entities of seemingly substantial size still are "small" in the cable industry — their field of operation. While the SBA definition of a small cable business would be an improvement over the FCC's current

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<sup>7</sup> In the Cable Act itself, The Commission is instructed to implement its rate regulations so as to reduce regulatory burdens on cable operators. Section 623 of the Cable Act specifically states: "In prescribing such regulations, the Commission shall seek to reduce the regulatory burdens on subscribers, cable operators, franchising authorities and the Commission." 47 U.S.C. § 543(b)(2)(A). We welcome this proceeding since it provides the mechanism for the Commission to begin to comply with this requirement under the law.

standards, it is not large enough to include many cable operators who are in desperate need of regulatory relief.

**A. As It Has Done In Telephone Regulation, The Commission Should Define A 'Small Cable Business' So As To Include The Entities Which Serve The 15% Of Cable Subscribers Not Served By The Largest Cable Companies**

In its regulation of telephone companies ("Local Exchange Carriers" or "LECs"), the Commission has differentiated between the largest LECs, Tier 1 LECs, which serve between 85 and 90 percent of all telephone customers,<sup>8</sup> and all other LECs, Tier 2 LECs. Tier 1 LECs are subjected to substantial regulatory requirements, while the burden imposed on Tier 2 LECs has been very substantially reduced.<sup>9</sup> The Commission's regulations recognize that, despite holding monopolies in their local service areas, Tier 2 LECs lack the financial, structural, and administrative strength of Tier 1 LECs.<sup>10</sup>

The Commission should adopt a standard for defining small cable businesses that recognizes a similar distinction in the cable industry as in the telephone industry. Under such a standard, the largest entities, which serve approximately 85% of all cable subscribers, would remain subject to regulation, but all other cable businesses, which serve the remaining

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<sup>8</sup> See Federal Communications Commission, Statistics of Communications Common Carriers, Table 2.3 (1992/1993 ed.); Policy and Rules Concerning Rates for Dominant Carriers, 5 F.C.C. Rcd. 6786, ¶ 258 (1990).

<sup>9</sup> See 5 F.C.C. Rcd. 6786, ¶ 257-61; Expanded Interconnection with Local Tel. Co. Facilities, 8 F.C.C. Rcd. 7374, ¶ 40 (1993).

<sup>10</sup> 5 F.C.C. Rcd. 6786, ¶ 257.

15% of cable subscribers, would be subject to significantly decreased regulation.<sup>11</sup> Adoption of this standard is even more compelling in the cable industry. Unlike telephone, cable is not a public utility and does not provide essential services. Moreover, the existence of competition in the cable industry reduces both the need for regulation, and the ability of small cable operators to cope with regulation and to effectively respond in a competitive environment.<sup>12</sup>

Applying the telephone company standard to the cable industry would make possible the continued existence of the independently owned cable businesses that have been the pioneers and backbone of the cable industry. These small companies continue to fill the critical roles of serving low-density areas and adding to innovation and the diversity of voices in the communications industry.

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<sup>11</sup> According to the most recent National Cable Television Association statistics, approximately 85% of the nation's 55 million cable subscribers are served by the top 30 MSOs. National Cable Television Ass'n, Cable Television Developments, 14-A (April 1994). The top 30 MSOs each serve over 400,000 subscribers. *Id.* Accordingly, the Commission should adopt a standard defining a small cable business as one serving less than 400,000 subscribers total (or a standard stated in equivalent gross revenue terms).

<sup>12</sup> Cable operators now face real competition from broadcast, DBS, TVRO and telephone company video dialtone systems, not to mention video stores, theaters and countless other forms of entertainment. Such competition enhances the hardships created by overregulation. In contrast most LECs face no competition by law.

**B. In The Alternative, The Commission Should Define A Small Cable Business As One With Less Than 250,000 Subscribers**

In its Second Order on Reconsideration in this proceeding, the Commission recognized that cable MSOs with as many as 250,000 subscribers will generally lack the resources to comply with extensive regulatory burdens.<sup>13</sup> Unfortunately, the Commission destroyed the usefulness of its recognition by limiting the size of the individual cable systems that an entity serving 250,000 total subscribers could hold and still gain regulatory relief.<sup>14</sup> If the Commission does not adopt the 400,000 subscriber standard, which is the most reasonable standard for defining a small cable business, then it should use its own 250,000 subscriber definition, but without the arbitrary limitations on the size of the individual cable systems such an entity holds.

As discussed above, an entity serving a total of 250,000 subscribers is not equipped financially or administratively to survive under the full brunt of Commission regulation. Neither an entity with a single, 250,000 subscriber system nor an entity owning 100 systems serving 2,500 subscribers each would be able to obtain the programming and equipment discounts available to the largest cable companies. Without the large-scale diversification of costs, affiliations with programmers, and broad subscriber base available to

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<sup>13</sup> Implementation of Sections of the Cable Television Consumer Protection and Competition MM Docket No. 92-266 Act of 1992: Rate Regulation, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, FCC 94-38 (released Mar. 30, 1994).

<sup>14</sup> Id. at ¶ 216.

the largest cable companies, an entity with as many as 400,000 subscribers, much less 250,000 subscribers, simply cannot survive in a competitive environment with the current regulatory burden.

**C. Even The SBA's Definition Of A Small Cable Business Is Inadequate**

Under the authority vested in it by the Small Business Act,<sup>15</sup> the SBA has promulgated standards for defining cable entities that qualify as small businesses.<sup>16</sup> The SBA currently defines a small cable business as one having annual revenues of less than \$11 million (i.e. approximately 40,000 subscribers).<sup>17</sup> Although this definition is well above the FCC's 15,000 subscriber limit for "small operators" and above the 1,000 subscriber limit for "small systems", it is not sufficient for purposes of cable regulation.

If the Commission uses the SBA's standard or an even smaller subscriber number, the reshaping of the cable industry will be accelerated, with further consolidation of ownership in the control of a small number of large companies. Under the burden of the Commission's regulations, many cable companies with significantly more than 40,000 subscribers have been forced to sell to or merge with the largest cable companies.<sup>18</sup>

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<sup>15</sup> 15 U.S.C. § 632.

<sup>16</sup> 13 C.F.R. § 121.601 (adjusted 59 Fed. Reg. 16,513 (Apr. 7, 1994)).

<sup>17</sup> *Id.*

<sup>18</sup> See *supra* note 5.

Implementing regulatory relief only for cable companies with less than 40,000 subscribers will not resolve the problem of massive consolidation, as small businesses are frozen out of the cable industry. Such a result would only emphasize the Commission's apparent lack of concern for the independent businesses that invested in and created the cable industry and have continued to provide important services to the public, particularly in smaller communities and rural areas. Such a result seems particularly anomalous given the Commission's (and Congress') emphasis on providing opportunities for entrepreneurs in other services such as PCS.

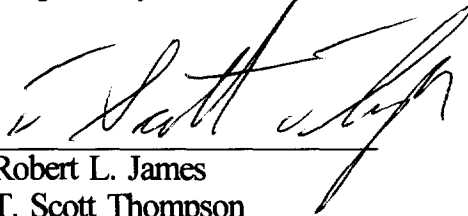
**II. THE COMMISSION COULD IMPLEMENT DIFFERENT DEGREES OF DEREGULATION FOR DIFFERENT SIZED SMALL CABLE BUSINESSES AND TOTAL DEREGULATION OF OPERATORS WITH LESS THAN 5,000 SUBSCRIBERS**

The Commission should adopt a sufficiently broad standard for defining a small cable business (i.e. 400,000 subscribers), and then could create levels of deregulation within those small cable businesses categories. For example, the Commission should recognize that the costs and burdens of regulation on a businesses serving less than 5,000 subscribers dictate that such entities be totally deregulated to the extent allowed by law. Such systems are much more costly to operate than even other small cable businesses because they do not have a sufficient subscriber base over which to spread the costs of regulation; they face substantially higher costs of capital; they enjoy few if any equipment and programming discounts; and they can employ only small administrative staffs. Such smaller cable systems generally serve smaller communities and rural areas where subscriber density is low, thus

adding to costs per subscriber. Further, the burdens of regulation imposed on the local governments in such smaller communities is also excessive. In addition, competition has developed rapidly in these areas which are being initially targeted as prime market areas by DBS providers.

The Commission should create a continuum of deregulation, starting with cable companies serving less than 400,000 subscribers, which would receive significant regulatory relief, and ending with companies serving a total of 5,000 or less subscribers, which would be totally deregulated to the extent allowed by law.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert L. James", is written over a horizontal line.

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November 16, 1994

**Attachment A**

Antietam Cable  
Auburn Cablevision  
Brownwood TV Cable Company, Inc.  
Buford Cablevision  
CableAmerica Corporation  
Cable Holdings, Inc.  
Cass Cable TV, Inc.  
Community Antenna Systems  
Florida Satellite Network, Inc.  
Helicon Corporation  
Illini Cablevision, Inc.  
Lakewood Cablevision  
Mid-Hudson Cablevision, Inc.  
OCB Cablevision  
Schuylkill Valley Trans-Video  
Shen-Heights TV Associates  
Sjoberg's Cable Television  
Sweetwater Television Company  
United Video Cablevision, Inc.